

October 21, 2013

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: FOIA REQUEST

Via U.S. MAIL, FAX & EMAIL

Dear FOIA Officer:

In a document from the U.S. Environmental Protection Agency (EPA) Office of Resource Conservation & Recovery's Resource Conservation and Sustainability Division (RCSD) entitled "Overview of RCSD Beneficial Use Efforts" (Briefing for Grace Robiou, January 19, 2012) several ongoing studies concerning risk assessment for scrap tires are described. The described studies include:

- "Safety Reports – Scrap Tires Study" described as "focused on whole tires (erosion prevention, highway barriers, artificial reefs); shredded tires (subgrade fill and embankments), and Crumb rubber (sports field cover, playground, filler in composites). The document said this study was initiated in December 2011 and would have its first draft completed by "February/March 2012."

In addition, the document refers to an updated web site for the "Scrap Tire Workgroup." The "Release and Posting of New Website" was slated for "Dec 2012."

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information concerning these and other safety studies or risk assessments for reuse of scrap tires, crumb rubber or shredded tires that any unit of EPA has undertaken since January 1, 2012. Specifically, we request the following:

1. Completed risk assessments or safety studies for scrap tires, crumb rubber or shredded tires including but not limited to those referenced in the above-cited RCSD document;
2. For those risk assessments or studies not completed, records describing the current status of those assessments; and
3. The url for the new scrap tire website, if it posted; the approved text for that website if it is not posted; or, if there is no approved text, documents describing the current status of this new website.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears....All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material consists of the records which would document some of the health and ecological risks posed by EPA encouraging application of tens of thousands of tons of hazardous wastes contained in scrap tires into the stream of American commerce. The materials will also reveal whether EPA has implemented the recommendation of the EPA Office of Inspector General (IG) Evaluation Report entitled “EPA Promoted the Use of Coal Ash products with Incomplete Risk Information (Report No. 11-P-0173; March 23, 2011) relating to agency promotion of scrap tire reuse without having done any appropriate risk assessment – and, if not, how far from completion the agency is. Finally, the new scrap tire website presumably contains the cautions – or lack thereof – EPA will share with the public about scrap tire reuse.

As such, the material we have requested is the most meaningful information relative to the request’s subject matter.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested information concerns the health and ecological consequences flowing from EPA promotion of reuse of scrap tires wastes in a wide variety of industrial and consumer products, as well as landscape applications. Besides interest in discovering those risks, the general public has an interest in whether the agency charged with environmental protection is using tax dollars to the possible detriment of public and environmental health.

The general public also has a keen interest in any factor bearing on the contents of consumer goods, as well as everyday products such as playground and sports field fill with which children come into direct daily contact. These products contain unregulated amounts of tire crumb but their health impacts have yet to be analyzed by EPA.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on PEER's web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

PEER has a long track record of attracting media and public attention to the internal records of federal agencies, especially EPA. Moreover, we believe that EPA tacitly concedes the public's interest in the subject matter of this requests by its efforts to update its scrap tire web display.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

The nature of the requested information should help the public understand 1) the effectiveness of government oversight and monitoring of its own operations, including implementation of IG recommendations for corrective action when appropriate; 2) the extent to which EPA, as a public health agency, has promoted commercial and consumer re-use without placing safeguards against direct contact with hazardous materials; and 3) the accuracy of past public assurances that EPA has given potential customers about the safety of reuse of scrap tire products.

Further, the requested records will contribute significant new information to the public concerning risk pathways from widespread reuse of scrap tires.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with

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If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Cordially,

Jeff Ruch
Executive Director